

MELINDA HAAG (CABN 132612)
United States Attorney

FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNESTO GABRIEL HABERLI,

Defendant.

CR 11 00721

VIOLATIONS: 18 U.S.C. § 1341-Mail
Fraud; 18 U.S.C. § 2-Aiding and Abetting

SAN JOSE VENUE

INFORMATION

The United States Attorney charges:

BACKGROUND

At all times relevant to this Indictment:

1. The Internet Group was a Texas corporation, with its primary place of business at 2719 Shady Creek, Pearland, Texas 77581, and was purported to have been in the business of offering Internet Service Provider ("ISP") services to individuals and companies. The Internet Group also conducted business under various business aliases, including but not limited to: ISDLOnline, FNP Corp., and Pecos, Hostingcom LLC, and UNIMETUSA and was engaged in the business of hosting web sites on the Internet for its clients.

2. Defendant ERNESTO GABRIEL HABERLI ("HABERLI") was an employee of

INDICTMENT

DOCUMENT NO.	CSA's
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DISTRICT COURT ORIGINAL CASE PROCESSING	

1 The Internet Group, in charge of computer networking equipment sales.

2 3. HABERLI kept track of purchases, sales, and inventory of Cisco equipment using
3 various forms as well as through an electronic accounting system.

4 4. Cisco Systems, Inc. ("Cisco") was based in San Jose, California, and was a
5 leading manufacturer and seller of computer networking equipment and services.

6 5. Among other things, Cisco sold SMARTnet service contracts on equipment that
7 allowed the end user to obtain technical support and advance replacement parts for the covered
8 equipment from Cisco. "Advance replacement" allowed end users to obtain replacement parts
9 from Cisco immediately, without having first to return the failed and defective part. SMARTnet
10 contracts were not transferable, and were for the benefit of the original end user. Once the
11 covered product was transferred to another party, any SMARTnet contract associated with the
12 part was removed from coverage. The new owner of the part had the option to register the part
13 with Cisco and obtain a new SMARTnet contract after the part was inspected and relicensed.

14 6. To provide technical support and advance replacement under SMARTnet
15 contracts, Cisco had a service request ("SR") system that allowed customers to contact Cisco and
16 obtain assistance with regard to defective or inoperative parts. A customer initiated an SR by
17 phone and by creating an account on Cisco Connection Online ("CCO"), a web-based customer
18 support application. To do so, the customer created an account on CCO, obtained a username,
19 and logged in to provide the SMARTnet contract number, serial number on the chassis of the
20 equipment covered by that SMARTnet contract, and a written explanation of the problem. SRs
21 were made through Cisco's Technical Assistance Center ("TAC").

22 7. Service engineers at the TAC engaged in a verbal and electronic written dialogue
23 with the customer in an attempt to resolve the issue, following a standardized series of resolution
24 attempts. If this protocol did not resolve the issue, the part was deemed defective, and the
25 service engineer would issue a return material authorization ("RMA") number by which Cisco
26 tracked the advance-shipped replacement part.

27 8. Once an RMA was authorized, Cisco shipped the replacement part, typically using
28 Federal Express, along with a preaddressed, prepaid United Parcel Service or Federal Express

1 label and package for the defective part to be returned. Cisco required the end user to send back
2 the failed and defective equipment within 30 days. The status of the RMA was monitored
3 through the Internet and by phone, and communications concerning the RMA were made through
4 the internet and by phone.

5 SCHEME AND ARTIFICE TO DEFRAUD

6 9. The scheme and artifice was that HABERLI submitted fraudulent SMARTnet
7 service contract claims to Cisco in order to receive "replacement" parts to which HABERLI was
8 not entitled. HABERLI then sold those fraudulently obtained "replacement" parts to
9 downstream customers and deposited the payments from those customers into his personal bank
10 account located at Wachovia Bank.

11 10. As part of the scheme and artifice to defraud, HABERLI directly contacted Cisco
12 by telephone and through the Internet, falsely claiming that he was in possession of a failed and
13 defective Cisco part covered by SMARTnet. HABERLI provided Cisco with a valid SMARTnet
14 contract number and the serial number of the chassis containing the supposedly failed and
15 defective part. In addition, the defendant falsely listed the various steps he claimed he had done
16 to troubleshoot the part and requested that Cisco send a "replacement" overnight to HABERLI's
17 business addresses in Houston, Texas and Washington, District of Columbia.

18 11. As part of the scheme and artifice to defraud, HABERLI caused Cisco to create an
19 RMA and to mail the defendant a part to replace the supposedly failed and defective part covered
20 by the SMARTnet contract. Usually the same day, Cisco shipped that "replacement" part to the
21 defendant through a commercial interstate carrier, typically Federal Express.

22 12. As part of the scheme and artifice to defraud, even though HABERLI's
23 SMARTnet contract required him to return a failed and defective part each time he contacted
24 Cisco regarding obtaining a replacement part, HABERLI only returned one part.

25 13. As part of the scheme and artifice to defraud, HABERLI sold the "replacement"
26 part to unsuspecting third parties, sometimes before requesting the "replacement" part from
27 Cisco and at other times shortly after receiving it. Once the "replacement" part arrived, the
28 defendant shipped it to his customer and received payment, typically in the form of a check.,

1 which HABERLI then deposited into his personal bank account located at the Wachovia Bank.

2 COUNTS ONE THROUGH SEVEN: (18 U.S.C. §§ 1341 and 2–Mail Fraud; Aiding and
3 Abetting)

4 14. The factual allegations in paragraphs 1 through 8, and the manner and means of
5 the scheme and artifice to defraud in paragraphs 9 through 13 are re-alleged and incorporated
6 herein as if set forth in full.

7 15. On or about the dates listed below, in the Northern District of California and
8 elsewhere, for the purpose of executing the aforementioned scheme and artifice to defraud and
9 attempting to do so, the defendant,

10 ERNESTO GABRIEL HABERLI,

11 caused to be deposited matters and things in the Northern District of California, that is,
12 replacement Cisco parts, to be sent and delivered by a private and commercial interstate carrier,
13 that is, Federal Express, as set forth in the counts below:

Count	Date Sent	Item
1	6/30/2007	Part for Service Request # 606323641
2	7/05/2007	Part for Service Request # 606356553
3	7/08/2007	Part for Service Request # 606366123
4	7/15/2007	Part for Service Request # 606415619
5	7/18/2007	Part for Service Request # 606443019
6	7/21/2007	Part for Service Request # 606462311
7	7/29/2007	Part for Service Request # 606510357

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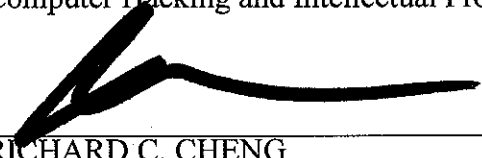
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1 All in violation of Title 18, United States Code, Sections 1341 and 2.

2
3 DATED: _____

MELINDA HAAG
United States Attorney

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6 
7 MATTHEW A. PARRELLA
8 Assistant U.S. Attorney
9 Chief,
10 Computer Hacking and Intellectual Property Unit

11 
12 RICHARD C. CHENG
13 Assistant U.S. Attorney
14 Computer Hacking and Intellectual Property Unit
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AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☒ INFORMATION ☐ INDICTMENT
☐ SUPERSEDING
OFFENSE CHARGED
 COUNT ONE through SEVEN: 18 U.S.C.
 § 1341 and 2 - Mail Fraud; Aiding and Abetting

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony
PENALTY:
 20 years imprisonment,
 \$250,000 fine;
 5 years supervised release
 100.00 special assessment
PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Inspector Jason Crowe, U.S. Postal Inspection Service

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

 Name and Office of Person
 Furnishing Information on
 THIS FORM

MELINDA HAAG

☒ U.S. Att'y ☐ Other U.S. Agency

 Name of Asst. U.S. Att'y
 (if assigned)

RICHARD C. CHENG, AUSA

 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

ERNESTO GABRIEL HABERLI

HRL

DISTRICT COURT NUMBER

CR 11 00721 EJD

DEFENDANT

IS NOT IN CUSTODY

- Has not been arrested, pending outcome this proceeding.
 If not detained give date any prior summons was served on above charges
- 1) ☒ Clerk, U.S. District Court
 NORTHERN DISTRICT OF CALIFORNIA
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges
- } ☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

 Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... If Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☐ SUMMONS ☒ NO PROCESS*

☐ WARRANT Bail Amount:

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

PENALTY SHEET

United States v. Ernest Gabriel Haberli

Count 1 through 7: 18 U.S.C. §§ 1341 and 2—Mail Fraud; Aiding and Abetting:

Maximum Penalties: 20 years imprisonment, years supervised release,
\$250,000 fine (or twice the gross gain or loss), and a \$100
mandatory special assessment.